

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

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|--------------------------------|---|---|
| <b>CLIFFORD OWENSBY,</b>       | : | Case No. 3:21-cv-00343  |
| Plaintiff,                     | : | Judge Michael J. Newman<br>Mag. Judge Caroline H. Gentry  |
| v.                             | : |   |
| <b>CITY OF DAYTON, et al.,</b> | : | <b><u>DEFENDANTS' RESPONSE IN<br/>OPPOSITION TO PLAINTIFF'S<br/>MOTION FOR AN EXTENSION<br/>OF TIME TO RESPOND TO<br/>DEFENDANTS' SUMMARY<br/>JUDGMENT MOTION</u></b> |
| Defendants.                    | : |   |

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Now comes the Defendants City of Dayton, Officer Vincent Carter, and Officer Wayne Hammock (“Defendants”) and hereby submit their Response in OPPOSITION to Plaintiff’s Motion for Extension of Time (Doc#36).

Plaintiff has requested an extension of time to respond to the City Defendants’ Motion for Summary Judgment (Doc#31) until 30 days after the close of discovery. With the Court’s latest Amended Scheduling Order—which was based on Plaintiff’s Third Motion for Extension to Designate Experts (Doc# 28)—the close of discovery has been pushed back to November 16, 2023. *See* Doc#30 [Amended Scheduling] Order. Plaintiff states that this extension is due to the ongoing nature of discovery. However, Plaintiff has not requested or engaged in any additional discovery related to the facts of this incident **since November 10, 2022**. This was the date on which both Officer Wayne Hammock and Officer Vincent Carter were deposed. Moreover, the City Defendants provided answers

and responses to Plaintiff's Interrogatories and Requests for Production of Documents on **September 12, 2022**.

The only reason the discovery deadline has been pushed so far forward is due to Plaintiff's three (3) motions for extensions to designate experts. *See* Doc# 24, 26, and 28. Each of these three motions for an extension requested sixty (60) additional days to designate experts, resulting in a six (6) month push forward on the close of discovery. Notably, the third and final date designated for Plaintiff to designate his experts was April 14, 2023, but **Plaintiff has designated no experts** as of the filing of this Response. Despite six (6) additional months to designate his experts, Plaintiff has still failed to do so.

With the absence of any experts designated by the Plaintiff, it is unclear what discovery remains before Plaintiff can respond to the City Defendant's Motion for Summary Judgment ("MSJ") (Doc#31). Plaintiff has all of the discovery necessary to respond to the City Defendants' MSJ. If he needed additional discovery, he should have obtained it by now. To the contrary, Plaintiff has made no requests to the City Defendants for new discovery or depositions since **November 10, 2022**. Further, he has failed to designate **any experts** by the third extended deadline, despite having an additional six (6) months of extensions to do so.

In further support of denying this excessive extension, Plaintiff has failed to comply with the Federal Rules of Civil Procedure in making his motion. Rule 56(d) requires the nonmovant to "show[] by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition[.]" Fed. R. Civ. P. 56(d). Plaintiff has failed to file such an affidavit or declaration with his motion that contains specified reasons why he needs more discovery before responding to the City Defendant's MSJ.

For the foregoing reasons, the City Defendants ask that this Honorable Court **DENY** Plaintiff's Motion for an Extension of Time to Respond to the City Defendants' Motion for Summary Judgment. City Defendants are open to a reasonable extension, such as thirty (30) days, but another five (5) months is not reasonable.

Respectfully submitted,

**BARBARA J. DOSECK**  
**CITY ATTORNEY**

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**CERTIFICATE OF SERVICE**

This hereby certifies that copies of the foregoing were sent via the Court's ECF System this 11th of July, 2023 to:

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